

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:00cr69

UNITED STATES OF AMERICA,	)	
	)	
	)	
v.	)	<b><u>ORDER</u></b>
	)	
ROBERT EARLE RUTHERFORD,	)	
	)	
Defendant.	)	
	)	
_____	)	

Pending before the Court is the Motion to Produce Records [# 172].

Counsel for the State of North Carolina (the “State”) also moves for leave to file their Motion to Produce Records by non-electronic means. The Court **GRANTS** the State’s Request for Non-Electronic Filing [# 171].

In its Motion to Produce Records, the State moves the Court to produce all records contained in the case file for case number 1:00cr69 and to unseal the Presentence Investigation Report. Most of the documents at issue are publically available. The State seeks the records contained in this file in connection with the North Carolina Innocence Inquiry Commission proceedings involving Kenneth Kagonyera and Robert Wilcoxson, III.

Upon a review of the record in this case and the State’s motion, the Court **GRANTS** the motion [# 172] to the extent it seeks a copy of the public records in

U.S. v. Rutherford, 1:00cr69-4. The Court **DIRECTS** the Clerk to make a copy of the pleadings and case file in 1:00cr69. This copy, however, shall exclude any sealed materials. The Clerk shall make available this copy for Senior Assistant District Attorney to pickup at the Clerk's Office at the United States Courthouse, 100 Otis Street, Asheville, N.C. 28801. The Court **DENIES** the motion [# 172] to the extent it seeks a copy of the Presentence Investigation Report for Defendant Rutherford. "[T]he confidentiality of PSRs has always been jealously guarded by the drafters of the federal rules, and by the federal courts." United States v. Trevino, 89 F.3d 187, 192 (4th Cir. 1996). Where a third party clearly specifies the information contained in a PSR that the third party expects will reveal exculpatory evidence, the Court will conduct an *in camera* examination of the PSR and make a determination as to whether the disclosure of such information is necessary. Id. The State has made no such showing and has not set forth any legal authority supporting its requests for the production of the PSR. Accordingly, an *in camera* review of the PSR is not warranted at this time. The Court **DENIES without prejudice** the motion to [# 172] to the extent it seeks a copy of the sealed PSR [# 99].<sup>1</sup>

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<sup>1</sup> Although the State also requests that the Court unseal the Government's Motion for Downward Departure [# 98], it does not appear that this document is currently under seal.

Signed: September 12, 2011

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

